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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 278

AARON D. FRANK,
Appellant,

vs.

STATE OF MARYLAND,
Appellee.

ON APPEAL FROM THE CRIMINAL COURT OF BALTIMORE

JURISDICTIONAL STATEMENT

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The Daily Record Co., Baltimore 3, Md.

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JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the Criminal Court of Baltimore (Part II), entered on March 17, 1958, convicting him of the crime of violating one of the health ordinances of Baltimore City and sentencing him to pay a fine of $20.00 and costs. He submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

No opinion was delivered in any of the courts below.

JURISDICTION

This prosecution was brought by the State of Maryland for violation by appellant of the provisions of Baltimore City Code (1950 Edition), Article 12, Section 120, in that a nuisance was suspected in appellant's dwelling house and he refused entry therein to a Health Department sanitarian, who sought to inspect the interior of the dwelling without a search warrant. The judgment of the Criminal Court of Baltimore (Part II) was entered on March 17, 1958. Appellant's timely petition for certiorari to review that judgment was denied by the Court of Appeals of Maryland on April 25, 1958. Throughout the proceedings below, appellant challenged the validity of the ordinance on the ground of its repugnance to the Constitution of the United States.

Notice of appeal to the Supreme Court was filed in the Criminal Court of Baltimore on June 16, 1958. The jurisdiction of the Supreme Court to review the decision of the Criminal Court of Baltimore is conferred by Title 28, United States Code, Section 1257(2), since the validity of a state statute[1] on grounds of repugnancy to the Constitution of the United States is drawn in question and the decision of the court below is in favor of its validity. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Wolf v. People of State of Colorado*, 338 U. S. 25; *Palko v. State of Connecticut*, 302 U. S. 319; *Twining v. State of New Jersey*, 211 U. S. 78; *Poulos v. New Hampshire*, 345 U. S. 395.

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[1] In this instance, a municipal ordinance; See *Poulos v. New Hampshire*, 345 U. S. 395, 402.

STATUTES INVOLVED

Baltimore City Code (1950 Edition), Article 12, Section 120, provided as of the dates involved in this case (and now provides):

> "Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the day time, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars."

Amendments To The Constitution Of The United States, Article IV, provides (1 United States Code, 1952 Edition, XLIV):

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Amendments To The Constitution Of The United States, Article XIV, provides, in part (1 United States Code, 1952 Edition, XLV):

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS PRESENTED

1. Can a health officer of Baltimore City inspect a private home without a search warrant if the owner or occupier objects?

2. Did the Criminal Court of Baltimore (Part II) err in sustaining the validity of Baltimore City Code (1950 Edition), Article 12, Section 120, and of the proposed inspection of appellant's private dwelling house for an alleged nuisance, consisting of alleged rat infestation, undue trash and debris, sought to be made thereunder in the day time without a search warrant by a sanitarian of the Baltimore City Health Department, against appellant's objection that said section was repugnant to the Fourth and Fourteenth Amendments to the Constitution of the United States and subjected him to, and the proposed inspection constituted, an unreasonable and illegal search of his house, a wrongful trespass upon his property and a wrongful taking thereof without due process of law, all in violation of his constitutional rights under the Fourth and Fourteenth Amendments to the Constitution of the United States?

3. Did the Criminal Court of Baltimore (Part II) err in denying appellant's "Motion To Dismiss" and his "Motion for a Verdict of 'Not Guilty' " and in convicting appellant of violating said Section 120?

STATEMENT

The Mayor and City Council of Baltimore, exercising within the limits of that city all of the police power of the State of Maryland,[2] enacted an ordinance empowering

[2] The Charter and Public Local Laws of Baltimore City (Flack's 1949 Edition), Section 6, states, in part: "6. The Mayor and City Council of Baltimore shall have full power and authority to exercise

health officers who shall have cause to suspect a nuisance exists in any house to demand entry therein in the day time and providing that an owner or occupier who shall refuse to open his house and admit a free examination shall forfeit and pay for every such refusal the sum of twenty dollars. Appellant refused to open his house and admit an examination by a Health Department sanitarian who demanded entry, without a warrant, to inspect for a suspected nuisance. Appellant was convicted of violating the ordinance and he appeals, urging, as he did below, that his conviction resulted from his rightful refusal to submit to an unreasonable and illegal search of his home, sought to be made under the ordinance in violation of the Fourth Amendment, and without that due process of law assured him by the Fourteenth Amendment, to the Constitution of the United States.

On February 27, 1958, in the day time, Sanitarian Gentry of the Baltimore City Health Department, acting on a

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all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular, without limitation upon the foregoing, shall have power by ordinance, or such other method as may be provided for in its Charter. . . .:

* * * * * *

"(5) ENTRY ON PRIVATE PROPERTY

"To enter, by its officers or agents, the land or possessions of any person for the purpose of carrying out the powers enumerated in this Section 6.

* * * * * *

"(11) HEALTH AND NUISANCES

"To provide for the preservation of the health of all persons within the city; to prevent the introduction of contagious diseases within the city . . .; and to prevent and remove nuisances.

* * * * * *

"(24) POLICE POWER

"To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise said power within said limit; . . ."

complaint of rats in the neighborhood, went to appellant's private dwelling house in Baltimore City to make an inspection of the premises. The sanitarian did not have a search warrant. After inspecting the yard and the exterior of the house, the sanitarian felt he had cause to suspect the existence of a nuisance, consisting of rat infestation, trash and undue debris, inside appellant's house. He did not see any rats on the premises. He did not observe the interior of the house. Appellant emerged from the house and spoke with the health officer in the yard. The sanitarian identified himself, informed appellant of his suspicions and demanded entry to the house to inspect the basement area for rats. Appellant refused to admit the sanitarian without a search warrant. The sanitarian did not enter the house.

On February 28, 1958, Sanitarian Gentry returned to appellant's house, but did not find anyone at home. He inspected the outside of the premises again. He did not observe the interior of the house. He then appeared before Magistrate Levin, one of the police magistrates of Baltimore City, and swore out a warrant for appellant's arrest for violation of Baltimore City Code (1950 Edition), Article 12, Section 120, in that a nuisance, consisting of rat infestation, undue trash and debris, was suspected in appellant's house and appellant refused him entry thereto. On March 5, 1958, while seated in his automobile parked on the street, appellant was arrested by a police officer, taken to the station house, where he posted collateral, then released pending trial.

On March 6, 1958, appellant was brought to trial, on the charge laid in the warrant, before Magistrate Rogers, one of the Station House Magistrates of Baltimore City, in Northern District Police Station. Appellant, who had coun-

sel, waived a jury trial and freely elected to be tried by the magistrate. Appellant offered no evidence in his defense, but attacked the validity of the ordinance on constitutional grounds. The magistrate found appellant guilty and imposed a fine of $20.00 and costs. Appellant forthwith entered an appeal.

On March 17, 1958, appellant appeared in the Criminal Court of Baltimore (Part II) (Oppenheimer, J.) for trial *de novo* on his appeal, in accordance with the local practice.[3] At the trial, appellant again attacked the ordinance as being repugnant to the Constitution of the United States and hence invalid. The court rejected his contentions, convicted him and sentenced him to pay a fine of $20.00 and costs. The court delivered no opinion.

On June 16, 1958, appellant filed in the Court of Appeals of Maryland a timely petition for certiorari to the Criminal Court of Baltimore to review his conviction. In the petition he again assailed the ordinance on constitutional grounds. On April 25, 1958, the Court of Appeals denied his petition. The court did not file an opinion.

How the federal questions are presented.

At every stage of the cause, appellant vigorously attacked Baltimore City Code (1950 Edition), Article 12, Section 120, the ordinance on which the prosecution is based, on the grounds that the ordinance subjected him to an unreasonable and illegal search of his house, a wrongful trespass upon his property and a wrongful taking thereof without due process of law, all in violation of his constitutional rights under the Fourth and Fourteenth Amendments to the Constitution of the United States, and was repugnant

[3] *Infra*, note 5.

to each of the Amendments and hence invalid (R. 1, 9, 39, 40, 44-46, 158, 159, 165-171).

In the magistrate's court, the court of first instance, the attack was made by means of an oral motion to dismiss and an oral motion for a verdict of "not guilty." Each was denied by the magistrate. These motions and the magistrate's action thereon do not appear of record, since, as is the ordinary practice in Baltimore City, the proceedings of the magistrate were not recorded by a reporter. However, the magistrate's verdict of "guilty", incorporating of necessity rejection of appellant's motions and a finding in favor of the validity of the ordinance, appears of record in this cause in the docket entries in the Criminal Court of Baltimore (R. 1, 170).

In the Criminal Court of Baltimore, which sat as an appellate court in the instant cause,[4] the validity of the ordinance was first drawn in question by appellant's motion to dismiss, made orally in open court and filed at the same time in writing, interposed by appellant before pleading to the charge (R. 9, 45, 46). The court deferred ruling on the motion until he had heard testimony (R. 9). At the close of the State's evidence, appellant again raised the question of the validity of the ordinance, now by means of a motion for a verdict of "not guilty", also made orally in open court (R. 39, 40) and filed simultaneously in writing (R. 158, 159). The court then denied both the motion to dismiss, filed earlier, and the motion for a verdict of "not guilty" (R. 1, 40). At the close of the entire case, appellant renewed both motions, but both were again denied by the court (R. 44). Each of the court's ruling on appellant's several motions necessarily sustained the validity

[4] *Infra*, note 5.

of the ordinance against appellant's objections on federal constitutional grounds.

Thereafter, appellant again attacked the validity of the ordinance and again asserted its repugnancy to the Fourth and Fourteenth Amendment in his petition for certiorari filed in the Court of Appeals of Maryland (R. 165-171). The Court of Appeals denied the petition, by endorsement thereon (R. 170), without an opinion, thereby upholding the validity of the ordinance.

Thus, throughout the proceeding, appellant clearly raised the federal questions which should have controlled the determinations made by the several courts below. He contended that proper decision of the issues so raised required a finding that the ordinance under which appellant was prosecuted was repugnant to at least one (the Fourteenth) of the federal constitutional amendments relied on by appellant and hence invalid, necessitating a verdict favorable to appellant. But on every occasion the rulings of the courts below were in favor of the validity of the ordinance.

Under the practice in Baltimore City, appellant, defendant in a criminal cause originating before one of the station house magistrates of the City, had no further appeal from his conviction by the Criminal Court of Baltimore, which usually functions as a *nisi prius* court, but which sat in this cause in the exercise of its special, appellate jurisdiction.[5] Upon denial by the Court of Appeals of Maryland, the State's court of last resort, of appellant's

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[5] Charter and Public Local Laws of Baltimore City (1949 Edition), Section 411; Laws of Maryland, 1953, Chapter 676; Annotated Code of Maryland (1951 Edition), Article 5, Section 94; 40 Opinions of the Attorney General of Maryland (1955) 641; Laws of Maryland, 1957, Chapter 399, Section 4; Annotated Code of Maryland (1957 Supplement), Article 5, Section 30; *Brack v. State*, 187 Md. 542.

petition for certiorari, addressed to that court's discretionary jurisdiction,[6] the judgment and sentence of the Criminal Court of Baltimore became and was the final judgment in the cause, rendered by the highest court of Maryland in which a decision could be had. From that judgment and sentence this appeal is brought here.[6a]

THE QUESTIONS ARE SUBSTANTIAL

Appellant, defendant in a criminal prosecution in the state courts of Maryland for violation of one of the health ordinances of Baltimore City, urged that the ordinance was invalid because repugnant to the Federal Constitution in that it subjected him to an unreasonable and unlawful search of his residence in violation of the Fourth Amendment and without the due process of law secured to him by the Fourteenth Amendment. The court below, in its verdict of "guilty", without opinion, upheld the ordinance, bringing the case within the purview of Title 28, United States Code, Section 1257(2), the jurisdictional provision relied on by appellant.

The cause presents portentous and pervasive issues arising from impingement of an attempted exercise of the police powers of the State, respecting protection of the public health, upon one of the fundamental tenets of individual liberty basic to our free society, the individual's right to be secure in the privacy of his home from arbitrary intrusion by government officials without a search or other proper warrant. The proposed search (inspection) constituted just such an arbitrary, unwarranted and unlawful invasion of privacy.

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[6] Annotated Code of Maryland (1957 Supplement) Article 5, Section 21.

[6a] *Poulos v. New Hampshire*, *supra* page 2, seems strikingly similar with regard to the steps taken below to attack the ordinance and their efficaciousness in supporting jurisdiction in this Court.

This Court has said that:

> "While the question has never been directly decided by this court, it has always been assumed that one's house cannot lawfully be searched without a search warrant except as an incident to a lawful arrest therein."[7]

And:

> "The search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws."[8]

As recently as *Miller v. United States*, ... U. S. ....., 78 S. Ct. 1189, 1195, 2 L. ed. 2d 1332, 1337 (decided June 23, 1958), this Court saw fit to emphasize the sanctity of "the precious interest of privacy summed up in the ancient adage that a man's house is his castle", quoting the remarks on that principle attributed to the Earl of Chatham:

> "The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter . . . All his force dares not cross the threshold of the ruined tenement!"

Aside from the question whether the Fourth Amendment should be given effect against the State in the circumstances of the instant cause,[9] it now seems settled that

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[7] *Agnello v. United States*, 269 U. S. 20, 32.

[8] *Id.*, at page 32.

[9] Appellant expects, if granted a hearing on the merits of this appeal, to present and to argue this important question also, for, while the issue may be considered by many to be closed (*Wolf v. Colorado, supra*), respectable opinion to the contrary seems to exist. (See dissenting opinion of Mr. Justice Black in *Adamson v. California*, 332 U. S. 46, 68, and opinions in *Wolf v. Colorado, supra*, of Mr. Justice Black (338 U. S. 25, 40), concurring, and Mr. Justice Rutledge (338 U. S. 25, 47), dissenting.)

protection of the security of one's privacy against arbitrary intrusion by government officers is among those guaranties basic to our free society, implicit in "the concept of ordered liberty", enforceable against the states through the Due Process Clause. *Wolf v. Colorado, supra; Palko v. Connecticut, supra; Twining v. New Jersey, supra.*

In *Wolf v. Colorado,* 338 U. S. 25, 27, 28 (1949), in dealing with the question whether a conviction in a State court violated the Due Process Clause because evidence admitted at the trial would have been excluded in a federal prosecution because obtained in a manner offending the Fourth Amendment, this Court said:

> "The security of one's privacy against arbitrary intrusion by the police — which is at the core of the Fourth Amendment — is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and basic constitutional documents of English-speaking people.
>
> "Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment."

If one were to read "health officers" in the place of "police", the Court's statement would seem to apply with no less vigor to the instant case. Certainly the search here was sought to be made solely on the authority and convenience of the sanitarian and was affirmatively sanctioned by the State in the ordinance.

Appellant was well within his constitutional rights in refusing admittance to his home to the health officer who had no warrant. He rightfully refused to comply with an ordinance purporting to authorize an unlawful search of his house without a warrant. *District of Columbia v. Little*, 85 U. S. App. D. C. 242. The instant case involves problems quite similar to those sought to be presented to this Court in that case. *District of Columbia v. Little*, 339 U. S. 1.

There the defendant-respondent was convicted in the trial court of interfering with a District of Columbia health officer by locking the door to her home, refusing the officer admittance and protesting her constitutional right to be secure from his search or inspection in the absence of a warrant. Two intermediate reviewing courts[10] found that the conviction was erroneous, on constitutional grounds, and the District petitioned this Court for certiorari.

There the obverse side, *i.e.* "important questions concerning legal provisions for protecting the health of the people by special and periodic inspection and elimination of potential sources of disease" (339 U. S., at pages 1, 2-3), of the very same questions here involved was apparently thought to be of sufficient importance to warrant this Court's granting certiorari on application of the government. That the questions are now brought here on the appeal of the citizen, and from the other side of the case, would not seem to lessen their weight and importance. Indeed, since appellant claims to seek, in his defense, no more than enforcement of one of the fundamental guaranties of individual liberty basic to our system of govern-

[10] *Little v. District of Columbia*, Municipal Court of Appeals for the District of Columbia, 62 A. 2d 874. *District of Columbia v. Little*, United States Court of Appeals for the District of Columbia Circuit, *supra*.

ment, considerations even graver than protection of the public health would now seem to militate in favor of this Court's entertaining the issues in the instant case.

Little appears to be the only case heretofore brought to this Court directly presenting, or approaching, the particular conflict here involved between the essential safeguards against unreasonable searches afforded the individual under federal constitutional guaranties and the necessary exercise by the government (of the state or other political subdivision) of its police power to protect the public health. Jurisdiction would seem to be sustained (as to the substantive questions) and plenary consideration warranted in the instant case by *Little* alone. While that case arose directly under the Fourth Amendment, that dissimilarity in the two cases would seem to be obviated by the holding in *Wolf v. Colorado* that the Fourth Amendment's prohibition against unreasonable searches is enforceable against the States.

Of course, in *Little*, this Court declined to decide the constitutional questions, applying instead its policy to dispose of a cause on non-constitutional grounds where the record permits, and this despite that such disposition (which was favorable to defendant-respondent) there rested on determination by this Court of an interpretative question (whether respondent's statements and actions constituted "interference" with the health officer within the meaning of the pertinent statutes and regulations of the District) which the lower courts had not decided.[11]

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[11] *District of Columbia v. Little*, 339 U. S. 1. Two justices dissented and advanced the dictum that ". . . the duties which the inspector was seeking to perform, under the authority of the District, were of such a reasonable, general, routine, accepted and important character, in the protection of the public health and safety, that they were being performed lawfully without such a search warrant as is

In the instant case, the validity of the search authorized by the ordinance, which appellant assails on constitutional grounds, is squarely in issue and was clearly and necessarily ruled on by the lower courts. Indeed, the claimed invalidity of the ordinance constituted appellant's chief, and almost sole, defense. While no opinions were delivered below, it is noteworthy that the Court of Appeals of Maryland, the state's highest tribunal, had, in another quite similar earlier case, carefully considered the specific questions here involved, *i.e.* the validity of Section 120 and the legality of an inspection sought to be made thereunder by a Health Department officer without a warrant as against the Fourth and Fourteenth Amendments, and had fully expressed itself in support of the validity and constitutionality of the ordinance. *Givner v. State of Maryland*, 210 Md. 484.[12] The rule of *Givner* was of course binding on the trial magistrate and on the Criminal Court of Baltimore.

The determinations of federal constitutional principles made in *Givner* collide head-on with exactly contrary holdings on essentially the same (in view of *Wolf v. Colorado, supra*) issues made by the United States Court of

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required by the Fourth Amendment to protect the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." 339 U. S., at pages 1, 8-9. The existence and tenor of the dissent would seem to point up the importance of the problem.

[12] In *Givner*, representatives of the Commissioner of Health, the Building Inspection Engineer and the Fire Department, an Electrical Inspector and a uniformed policeman requested permission to enter defendant-appellant's apartment to make inspections and were refused entry. Defendant was then indicted and convicted for violating three provisions of the Baltimore City Code. The first count charged violation of Article 12, Section 120 of that Code.

And compare *Poulos v. New Hampshire, supra*, in which this Court took into consideration an interpretation of the ordinance there attacked made by the state court in a case other than the principal one (345 U. S. 395, 402).

Appeals for the District of Columbia Circuit in *District of Columbia v. Little, supra,* where it was held by the majority that under the Fourth Amendment against unreasonable searches, the defendant-respondent was within her constitutional rights in refusing admittance to her home to a health inspector without a warrant. The chief basis of the decision in *Givner* seems to have been the Maryland court's feeling that the proposed inspection there was not "a search for evidence to prove guilt of a crime" (210 Md. 484, 504), which would admittedly have been abhorrent under either the Fourteenth Amendment or Maryland law, and that the inspection was hence beyond the pale of the protective Amendment.[13] Similar reasoning, *i.e.* that the Fourth Amendment relates only to searches in connection with criminal prosecutions or enforcement of penalties, and does not affect matters such as health department inspections, which are said to be civil, rather than criminal, in nature, seems to have motivated the dissenting opinion in the United States Court of Appeals in *Little, supra.* A ready answer to this proposition, as well as to other arguments in support of the *Givner* rule, is advanced in the comprehensive and well-reasoned majority opinion in *Little* in the United States Court of Appeals:

> "It is said to us that therefore there is no prohibition against searches of private houses by government officers, unless they are searching for evidence of crime; that if they are searching for evidence of crime, they must get a search warrant, but that if they are searching for something else or are just searching, they need not get a search warrant; for searchers of the latter sort, we are told, home owners must open their front doors upon demand of an officer without a warrant.

[13] The Maryland court seemed to have been impressed by the fact that this Court avoided deciding the constitutional question in *Little* (210 Md. 484, 499, 500).

> The argument is wholly without merit, preposterous in fact. The basic premise of the prohibition against searches . . . was the common-law right of a man to privacy in his home, a right which is one of the indispensable ultimate essentials of our concept of civilization. . . . It was not related to crime or to suspicion of crime. It belonged to all men, not merely to criminals, real or suspected. . . . To say that a man suspected of crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity."[14]

And there is no lack of opinion in this Court condemning the invasion of private dwellings by government officials without the intervention of a magistrate or other judicial officer. *Agnello v. United States, supra; Harris v. United States,* 331 U. S. 145; *Davis v. United States,* 328 U. S. 582; *Johnson v. United States,* 333 U. S. 10; *McDonald v. United States,* 335 U. S. 451; *Wolf v. Colorado, supra; Miller v. United States, supra; Jones v. United States,* ..... U. S. ....., 78 S. Ct. 1253, 2 L. ed. 2d 1514.

The constitutional questions herein discussed were fairly raised below, are substantial and important. Their determination will affect large numbers of property owners and others in Baltimore City and elsewhere in municipalities and political subdivisions having comparable health regulations. The only two reported cases in the country which have treated the constitutional problem, *Givner* and *Little,* appear to be directly opposed. It is submitted that the conclusions reached in *Little* by the United States Court of Appeals are supported by the better reason and authorities and that, in part for the same reasons as are therein stated, the Criminal Court of Baltimore, which obviously and

[14] 85 U. S. App. D. C. 242, 245-246.

necessarily followed *Givner*, erred in denying appellant's several motions which sought to resolve the issues in his favor on constitutional grounds and in its verdict. Appellant believes that the problems presented by this appeal — including that of "the appropriate balancing of the liberty of the (people) and the convenience of the (health officers)"[15] — are substantial, are of public importance and merit plenary consideration by this Court.

Respectfully submitted,

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[15] Paraphrasing Lord Simmonds in *Christie v. Leachinsky*, 1 All E. R. 567, 576, as quoted in the dissent of Mr. Justice Frankfurter in *Harris v. United States*, 331 U. S. 145, 170, in regard to the problem of "the appropriate balancing in the words of Lord Simmonds, of 'the liberty of the subject and the convenience of the police'." Words in brackets in the text above are, of course, supplied.

APPENDIX

The judgment below (from the docket entries in the Criminal Court of Baltimore):

Appeal Docket 1958.

January Term.

Number 103.

March 6, 1958—Appeal Certificate from the Northern District of Baltimore City — filed. Traverser tried and found Guilty by Magistrate Henry L. Rogers, on March 6th, 1958 and fined $20.00 and costs $1.70.

Charge—Violation of Section 120 of Article 12 of Baltimore City Code in that a nuisance is suspected at premises 4335 Reisterstown Road, owned by Aaron Frank, consisted of rat infestation, undue trash and debris and said Aaron Frank has refused entry to said premises to said W. H. Gentry.

* * * * * *

March 17, 1958—Verdict: Guilty.

March 17, 1958—Fined $20.00 and costs — Oppenheimer, Judge ($20.00 paid in Northern District).

* * * * * *